

SENATE BILL NO. 229

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 5/8/01

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to self-audits by insurers; amending Rule 402, Alaska Rules of**
2 **Evidence; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 21.09 is amended by adding new sections to read:

5 **Sec. 21.09.330. Insurer self-audit.** (a) An insurer, or an insurer's agent,
6 officer, employee, or contractor, may conduct a self-audit. A self-audit by an insurer
7 is privileged, and a communication relating to a self-audit is not subject to discovery
8 or admissible as evidence in a civil or administrative proceeding except as otherwise
9 expressly provided in this section.

10 (b) If the privilege under (a) of this section applies, an insurer or person may
11 not be examined in a civil or administrative proceeding regarding a self-audit or a
12 communication relating to a self-audit.

13 (c) The provisions of this section do not apply to the extent that

14 (1) the insurer that conducted or caused to be conducted the self-audit

1 expressly waives the privilege in writing; or

2 (2) in a civil or administrative proceeding, the court or hearing officer
3 determines that the self-audit privilege is asserted for a fraudulent purpose; before
4 making a determination under this paragraph, the court or hearing officer shall
5 privately review the matter.

6 (d) A court or hearing officer may only compel the disclosure of a
7 communication privileged under (a) of this section that is relevant to an issue in
8 dispute in the underlying proceeding. A party unsuccessfully opposing disclosure may
9 apply for an appropriate order protecting the communication from further disclosure.

10 (e) An insurer asserting a self-audit privilege under this section in response to
11 a request for disclosure shall provide, at the time of filing of any objection to the
12 disclosure, the following information:

13 (1) the identity of the person that conducted the self-audit;

14 (2) the general nature of the activities covered by the self-audit;

15 (3) an identification of the communications for which the privilege is
16 being asserted; and

17 (4) the date of the communications.

18 (f) A party seeking disclosure under (c)(2) of this section has the burden of
19 proving that the privilege is asserted for a fraudulent purpose.

20 (g) A person may at any time stipulate to entry of an order directing that a
21 specific communication relating to a self-audit is or is not subject to the privilege
22 described in this section.

23 (h) This section does not apply to

24 (1) documents, data, reports, or other information required to be
25 collected, developed, maintained, or reported to an agency under state or federal law
26 or order; however, a disclosure under this section does not by itself make this
27 paragraph applicable;

28 (2) information obtained by observation, investigation, or monitoring
29 by an agency; or

30 (3) a communication obtained by examination or investigation
31 authorized by the director if the communication is obtained independently from a self-

1 audit and even if the communication duplicates information, in whole or in part,
2 contained within a self-audit.

3 **Sec. 21.09.340. Authority of director over self-audit privilege.** The self-
4 audit privilege described in AS 21.09.330 does not impair the authority of the director
5 to conduct an examination of an insurer under this title, to require disclosure of a
6 communication, or to examine a person. However,

7 (1) a communication that is privileged under AS 21.09.330 must be
8 treated by the director as confidential;

9 (2) disclosure of a communication to the director does not constitute a
10 waiver of privilege; in the event that a privileged communication is disclosed by the
11 insurer to a third person, that communication is also considered to be privileged;

12 (3) a provision of law allowing the director to make information,
13 records, and reports public, and a provision permitting the director to exchange
14 information and data with the National Association of Insurance Commissioners, does
15 not apply to a communication relating to a self-audit disclosed to the director under
16 AS 21.09.330; a communication disclosed to the director remains the property of the
17 insurer; to the extent that the director has the authority to compel disclosure of a
18 communication relating to a self-audit under other provisions of law, a communication
19 disclosed to the director may not be disclosed to another person and must also be
20 treated as confidential;

21 (4) the director may not impose an administrative fine, penalty, or
22 other sanction based solely upon disclosure of a communication; before imposing an
23 administrative fine, penalty, or other sanction, the director shall consider any
24 reasonable corrective measures undertaken by the insurer; the imposition of an
25 administrative sanction is subject to applicable hearing procedures provided under this
26 title; and

27 (5) a communication disclosed to the director under this section is
28 subject to applicable privileges existing under law.

29 **Sec. 21.09.349. Definitions.** In AS 21.09.330 - 21.09.349,

30 (1) "communication" means an oral or written communication and
31 information relating to a self-audit, and includes a self-audit document;

1 (2) "self-audit" means a process of voluntary internal evaluation,
2 review, assessment, or audit not expressly required by law designed to identify and
3 prevent noncompliance or to improve compliance with law;

4 (3) "self-audit document" means a document prepared as a result of or
5 in connection with a self-audit by an insurer; "self-audit document" does not include
6 documents existing before the beginning of a self-audit.

7 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
8 read:

9 INDIRECT COURT RULE AMENDMENT. The provisions of AS 21.09.330, as
10 enacted by sec. 1 of this Act, have the effect of amending Rule 402, Alaska Rules of
11 Evidence, by making inadmissible in court, except under certain circumstances, a self-audit
12 and related self-audit materials.

13 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
14 read:

15 CONDITIONAL EFFECT. This Act takes effect only if sec. 2 of this Act receives the
16 two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of
17 Alaska.

18 * **Sec. 4.** This Act takes effect July 1, 2002.